IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1784 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LALJIBHAI VASHRAMBHAI PRAJAPATI

Versus

MUNICIPAL COMMISSIONER

Appearance:

MR YF MEHTA for Petitioners

MR PRASHANT G DESAI for Respondent No. 1, 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 22/02/2001

ORAL JUDGEMENT

This petition has been filed for a direction to the Ahmedabad Municipal Corporation requiring them to enforce the scheme, produced at Annexure-C in favour of the petitioners and not to take any coercive action in any manner whatsoever until such scheme is framed and allotment is made to the petitioners for respective

places and to treat the petitioners equally and to make allotment of the mini stalls after formulating the scheme thereon in the places mentioned at Annexure-A or if the respondent corporation does not find any place in favour of the petitioners, the petitioners be accommodated at the nearest mini stalls.

2. It is stated that the petitioners are Lari Gallawalas and they are occupying the places earmarked and shown vide Annexure-A by virtue of the licenses granted to them some 30 years before by the respondent Corporation. They occupied some places for legal and valid business and at no point of time any illegal action or activities as an act of nuisance was detected. The licence was issued to the petitioners and was renewed from time to time upon payment of the licence fee continuously. It is also stated that in the year 1886-87 similar litigations took place wherein the respondent Corporation took up mass action of removal the lorry Gallawalas and hawkers from their respective places. Some similar petitions were filed before this Court and thereafter the matters were filed as Special Leave Petitions (SLPs) (Civil Appeal No. 4751/87 and 195 to 286 and Special Nos. 511/86 and others, the respondent Corporation the scheme which is filed at Annexure-C. The respondent Corporation published an advertisement for making stalls on its places by causing removal of hawkers and Lari Gallawalas and to make mini stalls at the same place or thereabout. The petitioners were not given licence. Therefore, the petitioners filed Civil Suit No. 3859/96 before City Civil Court, Ahmedabad against removal of their respective Lari Gallawalas from the places. It is also stated that while deciding the petitioners' licenced stand, they should be included for making mini stalls or not, and if such particular place of a licenced zone is to be removed without creating provisions for mini stalls and removal of Lari Gallas amounts to infringement of the fundamental rights enshrined under Articles 14, 16 read with Article 21 of the Constitution of India.

3. The respondent Corporation has filed an affidavit-in-reply stating therein that the petitioners have filed Civil Suit No. 3859/96 in the City Civil Court, Ahmedabad for permanent injunction along with the application exh. 5 for the interim relief restraining the respondent Corporation, their officer and agent from removing the Lari Gallas situated at near school No. 5 and 6 in Shahpur, Ahmedabad. The application for the interim relief was dismissed by the City Civil Court on 6-1-1988. As such, the petition is not maintainable in

the eye of law at all. It is also stated in the affidavit-in-reply that the petitioners have encroached upon the street and footpath which creates the hindrance and trouble to the public as well as the traffic. The public at large is facing hindrance, difficulties and inconvenience in passing and repassing through such area because of the encroachment made by the petitioners on the street and footpath. It is also admitted that the respondent Corporation has given licence to the petitioners for moving one place to other place. Accordingly, the petitioners have to move their lorry from one place to another and they have not right to fix their lorry on any particular place or make any cabin on that place. The respondent Corporation issued the public notice in the newspaper on 1-1-1995 declaring that all the licences of the lorry withstand cancelled and the respondent Corporation has never received any rent from the petitioners or any other person. The respondent Corporation has removed all the lorry stands from their original places in the entire Ahmedabad city on 1-1-1995. The petitioners have no fundamental right to carry on their business at any particular place or on the footpath which creates hindrance and trouble to the public traffic. U/s 63 (1) and 91 of the Bombay Provincial Municipal Corporation Act the respondent Corporation is required to remove all the encroachment from the streets and pavements. Number of writ petitions were filed by hawkers (Lari Gallawalas) in the year 1984-85 who were doing business on the public road without any licence and putting hindrance to the traffic. The petitions were heard by this Court and this Hon'ble Court following the judgment of the Supreme Court directed the respondent Corporation to frame a scheme for hawking and non-hawking zone as it has been done by the Supreme Court in Bombay Hawkers' case. Against the said judgment of this Hon'ble Court, Lari Gallawalas preferred Special Leave Petition and some of the Lari Gallawalas directly filed writ petition and ultimately the Special Leave Petitions were disposed of in view of the fact that the respondent Corporation had already framed a scheme and placed it before the Hon'ble Supreme Court and the Supreme Court had directed this Court to consider the said scheme after hearing the objections of Lari Gallawalas and their union. The scheme was confirmed with certain modifications by the order dated 22-4-1987. The matter was placed before the Supreme Court in which there was an objection and ultimately by the order dated 7-12-1987 the scheme was scrutinized and the report was made before the Supreme Court and the Supreme Court disposed of the said Special Leave Petitions in view of the scheme scrutinized by this Court. As per the scheme, there are hawking and

non-hawking zones. In the non-hawking zone no hawkers, squatter or fixed cabins holders are allowed to do their business and no licences are issued, while in the hawking zone the hawkers are permitted with the licence as per conditions laid down in the scheme. In view of the decision of the Supreme Court in the case of Ahmedabad Municipal Corporation V/s. Nawabkhan Gulabkhan Pathan reported in JT 1996 Supreme Court 485, wherein it is held by the Supreme Court that no person can be permitted to keep the public road which is meant for the public at large. Hence, this petition is required to be dismissed.

4. The contention of the learned counsel for the petitioner is that the scheme for the Lari Gallawalas framed and modified by this Court and accepted by the Supreme Court has to be implemented and therefore the petitioners are entitled to do their respective business under the said scheme.

5. In the facts and circumstances of this case, I think it just and proper to dispose of this petition with a direction to the petitioners to file their representation before the concerned authority of the Ahmedabnad Municipal Corporation for giving permission or licence to do their respective business at a particular place within a period of four weeks from today. If such representation is made by the petitioners to the authority concerned of the respondent Corporation within stipulated time, the authority concerned shall consider and decide the same in accordance with law as per the scheme framed and modified by this Court and accepted by the Supreme Court keeping in view the advertisement made by the respondent Corporation the need of the people at the relevant places and another Lari Gallas for allotment of place to be made to them. Representation if any made shall be decided within a period of two months thereafter.

6. With the above observations and directions, this petitions stands disposed of. Rule is discharged with no order as to costs.

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/JVSatwara/